



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:

Casmalia Disposal Site
Santa Barbara County, California

Proceeding under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. § 9622(g)(4)

)
) U.S. EPA Docket No. 99-02(c)
)
)

)
) **ADMINISTRATIVE ORDER**
) **ON CONSENT**
) **DE MINIMIS CONTRIBUTORS**
)
)

CDM204489

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I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order," "Order," or "Settlement") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987), and further delegated to the Regional Administrators of U.S. EPA by Delegation No. 14-14-E (issued May 11, 1994, amended by memorandum May 19, 1995). Within Region IX, this authority has been delegated to the Superfund Division Director by Regional Order No. 1290.21-A, entitled "De Minimis Settlements," dated November 23, 1998. This Consent Order is also entered into pursuant to the authority of the United States on behalf of the United States Department of Interior ("DOI"), on behalf of the United States Fish and Wildlife Service ("FWS"), the United States Department of Commerce ("Commerce"), on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of the Air Force ("Air Force"), all of whom, by Executive Order 12580, as amended by Executive Order 13016, 61 Fed. Reg. 45872 (August 30, 1996), have been delegated with the authority vested in the President as Federal Trustees for natural resources that may have been, or in the future may be, injured by the release of hazardous substances at or from the Casmalia Resources Hazardous Waste Management Facility.

2. This Consent Order is issued to the persons, corporations or other entities identified in Appendix A ("Respondents") and the departments, agencies and instrumentalities of the United States identified in Appendix B ("Settling Federal Agencies"). Each Respondent and Settling Federal Agency ("Settling Party") agrees to undertake all actions required by this Consent Order. Each Settling Party further consents to and will not contest the United States' jurisdiction to issue

this Consent Order or to implement or enforce its terms.

3. The United States and Settling Parties (“Parties”) agree that the actions undertaken by Settling Parties in accordance with this Consent Order do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or the Determinations contained in Sections IV (Statement of Facts) and V (Determinations), respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the Parties, as more precisely described in the terms of this Consent Order, are:

- a. to reach a final settlement among the Parties with respect to the former Casmalia Resources Hazardous Waste Management Facility (more precisely defined as “Site,” below), pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g)(“De minimis settlements”), that allows Settling Parties to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Site, and for response costs and, for some parties, Natural Resource Damages, incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;
- b. to provide Settling Parties with two options for resolution of such liability: Settlement Option A, for which the Settling Parties pay a greater premium and that affords greater finality (including, for example, a covenant not to sue for Natural Resource Damages and for response costs incurred and to be incurred by the Federal Trustees at or in connection with the Site); and Settlement Option B, for which the Settling Parties pay a lower premium and that contains less finality and greater risks for the Settling Parties. The terms of Options A and B are more

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fully described within.

- c. to resolve the claims of the Respondents that could have been asserted against the United States with regard to the Site;
- d. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties ("PRPs") from further involvement at the Site;
- e. to obtain settlement with Settling Parties for their fair share of response costs incurred and to be incurred at or in connection with the Site by U.S. EPA and by private parties (and with respect to Settling Parties that elect Settlement Option A, response costs incurred by the Federal Trustees); and
- f. to provide for contribution protection for Settling Parties with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order, including the attached appendices, that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

"Air Force" shall mean the United States Department of the Air Force and any successor departments, agencies, or instrumentalities of the United States.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

"Commerce" shall mean the United States Department of Commerce and any successor departments, agencies, or instrumentalities of the United States.

"Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any

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appendix, the Order shall control.

“Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or a federal holiday, the period shall run until the close of business on the next working day.

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities of the United States.

“Escrow Account” shall mean the escrow account for the Site, which was established pursuant to the Consent Decree entered by the United States District Court for the Central District of California on June 27, 1997 in United States of America v. ABB Vetco Gray Inc. et al., Civ. No. CV 96-6518-KMW (JGx)(“Casmalia Consent Decree”). The Escrow Account holds money collected, inter alia, from this and other settlements and enforcement activities, and which shall be used for response actions at and concerning the Site.

“Escrow Trustee” shall mean the trustee of the Escrow Account.

“Federal Trustees” shall mean DOI, Commerce, and the Air Force.

“Interest” shall mean interest at the current rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

“Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of any and all Natural Resources at the Site.

“Paragraph” shall mean a portion of this Consent Order identified by an Arabic numeral.

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"Parties" shall mean the United States, on behalf of the Federal Trustees, the U.S. EPA, and the Settling Parties.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean those persons, corporations, or other entities listed in Appendix A in connection with the facility or facilities specified therein.

"Section" shall mean a portion of this Consent Order identified by a Roman numeral.

"Settling Federal Agencies" shall mean those departments, agencies or instrumentalities of the United States Government listed in Appendix B in connection with the facility or facilities specified therein.

"Settling Parties" shall mean both the "Respondents" listed in Appendix A and the "Settling Federal Agencies" listed in Appendix B.

"Site" shall mean the former Casmalia Resources Hazardous Waste Management Facility ("facility"), encompassing approximately 252 acres, located approximately ten (10) miles southwest of Santa Maria and one and a half miles north of Casmalia in Santa Barbara County, California, and depicted generally on the map attached at Appendix C. Site shall also include the areal extent of contamination that is presently located in the vicinity of the Casmalia facility and all suitable areas in very close proximity to the contamination necessary for the implementation of the response action(s) and any areas to which such contamination migrates.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

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"U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

"U.S. EPA Hazardous Substance Superfund" shall mean the Hazardous Substance

Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

IV. STATEMENT OF FACTS

6. Paragraphs 7 through 25 below contain a summary of the Site background as alleged by U.S. EPA which, for purposes of this Consent Order, the Settling Parties neither admit nor deny.

7. The Site encompasses (among other areas, as defined above) the former Casmalia Resources Hazardous Waste Management Facility, an inactive commercial hazardous waste treatment, storage, and disposal facility, which accepted large volumes of hazardous substances from 1973 to 1989. Located on a 252-acre parcel in Santa Barbara County, California, the former Casmalia Resources Hazardous Waste Management Facility consists of six landfills, numerous surface impoundments, disposal trenches, injection wells, waste spreading areas and tank treatment systems.

8. The location of the Site is near the southern end of the Casmalia Hills in the Santa Maria Basin of coastal California, approximately ten (10) miles southwest of the town of Santa Maria and one and a half miles north of the town of Casmalia. The now defunct facility is situated within the Shuman Canyon drainage sub-basin on a southern facing slope traversed by three small canyons. Casmalia Creek, about 500 feet west, is the surface water body nearest to the abandoned facility. This creek flows to the southwest to join Shuman Creek about one mile southwest of the town of Casmalia. Shuman Creek continues southward and westward, discharging eventually into the Pacific Ocean.

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9. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been, or are threatening to be, released into the environment at or from the Site. These hazardous substances include a wide variety of organic and inorganic compounds.

10. During the facility's sixteen (16) years of operation, the owner(s)/operator(s) accepted approximately 4.453 billion pounds of documented liquid and solid wastes from thousands of generators, including numerous large and small private businesses and federal,

state, and local governmental entities.

11. From 1980 to 1989, the facility had interim status pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6925(e), by operation of law. Because of continuing deficiencies in facility operations, no final RCRA permit was granted. The facility has not been closed adequately in accordance with the requirements of RCRA.

12. In late 1989, the owner(s)/operator(s) ceased accepting off-Site waste shipments to the facility and, in the early 1990s, the owner(s)/operator(s) stopped all active efforts to properly close and remediate the facility, asserting that they had insufficient monies to pay for closure or remediation.

13. The facility's closure fund, the RCRA Closure/Postclosure Fund, set aside by the facility's owner(s)/operator(s) as financial assurance to meet RCRA requirements, is insufficient to pay for the costs of closure and post-closure activities at the Site.

14. After the facility's owner(s)/operator(s) ceased accepting off-Site waste, the owner(s)/operator(s) curtailed facility maintenance activities, and Site conditions deteriorated and became unstable.

15. As a result of the release or threatened release of hazardous substances, U.S. EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In August 1992, U.S. EPA commenced a removal action under CERCLA to implement certain Site stabilization actions, prevent further deterioration of Site conditions, and control the most immediate threats. The Site continues to pose an imminent and substantial endangerment within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973.

16. In performing these response actions, U.S. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of August 1, 1999, U.S. EPA had incurred at least \$19.19 million in response costs at this Site.

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17. Because the owner(s)/operator(s) have failed to perform sufficient closure and

remediation activities at the Site, in March 1993, U.S. EPA, under CERCLA and RCRA authorities, notified a group of approximately sixty-five (65) waste generators, representing some of the parties that arranged for disposal of the largest quantities of hazardous substances at the Site, of their potential liability for Site remediation. Approximately fifty four (54) of the first sixty-five (65) notified generators formed the Casmalia Steering Committee ("CSC"). U.S. EPA negotiated with the CSC and other PRPs to secure implementation of response actions at or in connection with the Site.

18. On September 17, 1996, the United States filed a complaint against the CSC pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, seeking cleanup of the facility and payment of certain response costs incurred by the U.S. EPA and the United States Department of Justice ("U.S. DOJ") in connection with the Site. On this same date, the United States lodged the Casmalia Consent Decree in the Central District of California, United States District Court, resolving the claims in that complaint. On June 27, 1997, the Court entered the Casmalia Consent Decree.

19. The Casmalia Consent Decree establishes a comprehensive framework in which to address: (1) the remediation of the Site to protect public health, welfare and the environment from the release or threatened release of hazardous substances at the Site; and (2) the performance and financing of the response actions to be undertaken at the Site. The Casmalia Consent Decree contemplates that a significant portion of the work at the Site will be paid for by funds obtained through future enforcement efforts, including, but not limited to, settlements such as this de minimis Consent Order, and various enforcement and settlement efforts directed toward the prior owner(s)/operator(s) of the Site and other PRPs.

20. On December 23, 1997, the United States filed a complaint against Casmalia Resources, Hunter Resources and Kenneth H. Hunter, Jr., who were former owner(s)/operator(s) of the Site, seeking the recovery of past and future response costs associated with the Site. That litigation is proceeding.

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21. In October 1998 U.S. EPA began notifying de minimis PRPs of their potential liability in connection with the Site and providing settlement offers to them. Notice and an opportunity to settle were offered to approximately 1,300 parties at different times during 1999 and 2000. The Settling Parties are among those parties that received notice and the opportunity to settle. U.S. EPA may enter into additional settlements such as this one with other de minimis PRPs in the future with respect to this Site.

22. Information currently known to U.S. EPA indicates that each Respondent listed on Appendix A and each Settling Federal Agency listed on Appendix B arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such Respondent or Settling Federal Agency, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent or Settling Federal Agency.

23. Information currently known to U.S. EPA indicates that each Respondent listed on Appendix A and each Settling Federal Agency listed on Appendix B contributed less than 2,843,000 pounds of materials containing hazardous substances to the Site, and the hazardous substances contributed by each Settling Party to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. The volume of materials attributed by U.S. EPA to each Respondent or Settling Federal Agency is specified in Appendix A or B, respectively. Appendix D, entitled Contaminants List, provides a list of contaminants identified to date at the Site.

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24. Based on current information, U.S. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by U.S. EPA and by private parties is \$271.9 million. The payment required to be made by each Settling Party pursuant to this Consent Order is a minor portion of this total amount. The required payment (for Settlement Option A or B) for each Respondent or Settling Federal Agency is specified in Appendix A or B, respectively.

25. Information currently known to the United States indicates the presence of one or

more Natural Resources at or near the Site which may have been, or which may be, injured by release(s) of hazardous substances or which may have been or which may be injured by response actions. U.S. EPA shall seek to coordinate assessments, investigations and planning with the Federal Natural Resource Trustees pursuant to CERCLA Section 104(b)(2), 42 U.S.C. 9604(b)(2).

V. DETERMINATIONS

26. Based upon the Findings of Fact set forth above and on the administrative record for this Site, U.S. EPA and the United States, on behalf of the Federal Trustees, have determined that:

- a. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. Each Settling Party is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- c. Each Settling Party is potentially liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- d. There has been an actual or threatened "release" of a "hazardous substance" at the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).
- e. The actual or threatened release of a hazardous substance at the Site has caused or may cause the incurrence of response costs and may have injured, or may injure, Natural Resources within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- f. Prompt settlement is "practicable" and in the "public interest" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. As to each Settling Party, this Consent Order involves only a minor portion of the

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total response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

- h. The amount of hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Party are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

27. Based upon the administrative record for the Site and the Statement of Facts and the Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED AND ORDERED:

VII. SETTLEMENT OPTIONS

28. Settling Parties may choose between Settlement Options A and B as set forth in this Section and in Sections XII, XIII, and XV. Except where this Order specifies particular Sections or Paragraphs as pertaining to Option A or B, in which case those provisions apply only to Settling Parties that elect Option A or B, respectively, all other terms of this Order apply equally to all Settling Parties, regardless of which settlement option they choose.

29. General Description of Options

- a. As between the two settlement options, Settlement Option A is designed to provide Settling Parties with a higher degree of finality and certainty. Under Settlement Option A, the payment includes a premium of 100%, which covers, among other risks, the risk that total response costs incurred or to be incurred at or in connection with the Site by the United States, or by any private party, will exceed the estimated total response costs upon which Settling Parties' payments are based. Pursuant to Section XII, Settling Parties that choose Option A will receive more protective covenants (including a covenant not to sue for Natural Resource Damages and Federal Trustees' response costs), and these Option A

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covenants have more limited reservations.

- b. Under Settlement Option B, which offers less finality than Settlement Option A, the premium is 50%. Pursuant to Section XIII, Settling Parties that choose Option B do not receive a covenant not to sue for Natural Resource Damages or Federal Trustees' response costs and risk liability for additional future payments.

30. Calculation of Payment

- a. Each Settling Party's payment is based on its share, by weight, of the estimated total response costs incurred or to be incurred at or in connection with the Site.
- b. For Settling Parties that elect Settlement Option A, U.S. EPA's cost estimate is \$272,163,417. This figure includes an estimated \$271.9 million that have been or will be incurred by U.S. EPA for response actions at the Site and by the CSC for response actions at the Site, as required by the Casmalia Consent Decree. This figure also includes an estimate of \$263,417 for certain response costs that will be incurred by the Federal Trustees at the Site. A portion of the money paid by Settling Parties that elect Option A will be provided to the Federal Trustees to perform activities that support both the response action and the assessment of potential injuries to natural resources in accordance with CERCLA Sections 104(b)(2), 107(f)(1) and 122(j)(2), 42 U.S.C. §§ 9604(b)(2), 9607(f)(1) and 9622(j)(2).
- c. For Settling Parties that elect Settlement Option B, U.S. EPA's cost estimate is \$271.9 million that have been or will be incurred by U.S. EPA for response actions at the Site and by the CSC for response actions at the Site, as required by the Casmalia Consent Decree. This figure does not include an estimate for any response costs that will be incurred by the Federal Trustees.
- d. Each payment amount includes a premium to cover the risks and uncertainties associated with this settlement. The premium (100% for Option A, 50% for

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Option B) is applied to each Settling Party's volumetric share of all estimated "non-fixed Site costs" but is not applied to U.S. EPA's and the CSC's calculation of "fixed Site response costs," which are essentially costs that have already been incurred. Specifically, fixed Site response costs include \$16.38 million in Past Response Costs (as defined in the Casmalia Consent Decree) incurred by the United States between March 1, 1992 and July 22, 1997, and response costs of \$2.81 million incurred by the United States between July 23, 1997 and August 1, 1999 (the date U.S. EPA selected as the "cutoff" for the calculation of costs that have already been incurred for purposes of the cost estimate used for this Order and future enforcement efforts). Fixed Site response costs also include response costs of \$13.68 million incurred by the CSC for response actions between April 1993 and August 1998 for Phase 1 Work in accordance with the Casmalia Consent Decree. U.S. EPA's and the CSC's fixed response costs together total \$32.86 million. Under either settlement option the premium is not assessed against this \$32.86 million. Under either settlement option, the premium is applied to U.S. EPA's and the CSC's "non-fixed" estimated Site response costs, or estimated response costs incurred and to be incurred at the Site after August 1, 1999. This amount totals \$239.07 million. Under Option A, the 100% premium is also applied to estimated non-fixed Site response costs of \$263,417 to be incurred by the Federal Trustees, described in subparagraph b, above.

- e. The mathematical formula for calculating each Settling Party's payment amount under Option A is as follows:

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Your company's or

organization's

Waste Quantity

Total Site

X

Waste Quantity

4.453 Billion lbs.

Non-Fixed

Site Response

Costs

\$239.07

Million

+

Natural
Resources

Trustees'

Costs

\$263,417

X

Premium

(100%)

2.0

+

=

Payment

Amount

Your company's or

organization's

Waste Quantity

Total Site

X

Waste Quantity

4.453 Billion lbs.

Fixed Site

Response

Costs

\$32.86 Million

[No Premium

Assessed]

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- f. The mathematical formula for calculating each Settling Party's payment amount under Option B is as follows:

Your company's	Non-Fixed			
or organization's	Site			
<u>Waste Quantity</u>	Response			
Total Site	x	Costs	x	Premium (50%)
Waste Quantity		\$239.07		1.5
4.453 Billion lbs.		Million		
		+	=	Payment
				Amount
Your company's	Fixed Site			
or organization's	Response			
<u>Waste Quantity</u>	Costs			
Total Site	x	\$32.86		[No Premium
Waste Quantity		Million		Assessed]
4.453 Billion lbs.				

- g. Each Settling Party's payment amount for Settlement Option A is set forth in Column A opposite that Settling Party's name on Appendix A, for Respondents, and Appendix B, for Settling Federal Agencies. Each Settling Party's payment amount for Settlement Option B is set forth in Column B opposite that Settling Party's name on Appendix A, for Respondents, and Appendix B, for Settling Federal Agencies.

VIII. PAYMENT

31. Signature and Payment by Respondents

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- a. Each Respondent has submitted to U.S. EPA a fully and properly executed original signature page for this Consent Order, electing either Settlement Option

A or Settlement Option B, and payed to the Escrow Account the payment specified for that Respondent in the appropriate column (i.e., Column A for Option A, Column B for Option B) opposite that Respondent's name in Appendix A in accordance with the instructions provided in Paragraph 34(a).

32. Signature and Payment by Settling Federal Agencies

- a. Each Settling Federal Agency has submitted a fully and properly executed original signature page, bearing the original signature of an authorized representative of the Settling Federal Agency, electing either Settlement Option A or Settlement Option B, for this Consent Order to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7)
San Francisco, California 94105-3901

- b. As soon as reasonably practicable after the effective date of this Consent Order, the United States, on behalf of the Settling Federal Agencies, shall pay the amounts specified for the Settling Federal Agencies in Appendix B, based on the Settling Federal Agencies' elections of Settlement Options A or B, in one or more payment(s). Such payment(s) shall be made and evidence of such payment(s) shall be sent as provided in Paragraph 34(b).

33. The Parties to this Consent Order recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Order can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Order shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

34. Payment Provisions

- a. Payment by Respondents. Each Respondent made payment by one of the following methods:

(i) By Cashier's or Certified Check

Cashier's check or certified check, made payable to "BTCO. as Custodian for Casmalia Resources Site" mailed to the following address: P.O. Box 13248 (Lbox #13248), Newark, NJ 07101, and including a completed Payment Invoice.

(ii) By Wire Transfer

Funds wired to:
Bankers Trust Co.
4 Albany Street, New York, NY 10006
ABA/Locator#: 021-001-033
Acct #: 01-419-647
REF: Casmalia Resources Site Custodial Agreement
Payor: the name of the Settling Party exactly as it appears at the top of the "Consent and Authorization" page.

Any payments received by the Escrow Account after 5:00 p.m. Pacific Time will be credited on the next business day. At the time of payment, each Respondent submitted a copy of the completed Payment Invoice to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7)
San Francisco, California 94105-3901

- b. Payment by Settling Federal Agencies. The United States, on behalf of the Settling Federal Agencies, shall pay the amounts specified for the Settling Federal Agencies in Appendix B to the Consent Order by one or more check(s) or wire transfer(s) to "Bankers Trust Co. as Custodian for Casmalia Resources Site" at the addresses noted in Paragraph 34(a)(i)-(ii). At the time of payment, the United States, on behalf of the Settling Federal Agencies, shall submit documentation that payment of the amounts owed on behalf of the Settling Federal Agencies has been made to:

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Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7)
San Francisco, California 94105-3901

35. Refunds from the Escrow Account. In the event that this Consent Order does not become effective, then U.S. EPA shall direct the Escrow Trustee, within thirty (30) days of receipt of notice of such event from U.S. EPA, to refund the Settling Parties' payment(s). Any refunds made under this Paragraph shall include the interest accrued on the payment, if any, minus a *pro rata* share of the costs of administering the Escrow Account to that date and taxes payable by the Escrow Trustee.

36. Disqualification. If at any time prior to the effective date of this Consent Order, U.S. EPA determines, in its sole and unreviewable discretion, that one or more of the statements of facts made in Paragraph 23 or the determinations made in Subparagraphs 26(g) or (h) no longer apply(ies) to a Settling Party, such Settling Party shall be disqualified from participation in this settlement, and the Escrow Trustee shall, within thirty (30) days of receipt of written notification by U.S. EPA of such disqualification, refund such Settling Party's payment.

IX. FAILURE BY RESPONDENTS TO MAKE TIMELY PAYMENTS

37. Interest on Late Payments

- a. Because all Respondents electing Settlement Option A have remitted payment in full as required by Paragraph 31 prior to the effective date of this Order, no Interest shall accrue on any such payment.
- b. Respondents electing Settlement Option B who fail to pay their share of increased costs as set forth in Paragraph 53 shall pay Interest on the unpaid balance, commencing on the date that payment is due and accruing through the date of the payment.

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- c. Interest shall be paid by a separate check in the amount of the Interest owed and shall be sent simultaneously with the payment required in paragraph 53. Payment of Interest shall be made and a copy of the cashier's or certified check shall be

sent as follows:

by Cashier's or Certified Check made payable to
"Wells Fargo Bank as Custodian for Casmalia Resources Site"
and mailed to
Wells Fargo Bank
Customized Fiduciary Services
MAC N9303-120
Sixth and Marquette
Minneapolis, MN 55479
Attention: Marco X. Morales
Re: Casmalia Custody Account

38. Stipulated Penalties and Disqualification

- a. In addition to the Interest required by Paragraph 37, if a Respondent electing Settlement Option B fails to remit the payment required by Paragraph 53 when due, then that Respondent shall also pay stipulated penalties to U.S. EPA of \$1,000 per day for each day that the payment is late.
- b. Penalties shall begin to accrue from the day when payment by a Respondent is due pursuant to Paragraph 53 and shall continue to accrue until all payments required by this Order for that Respondent have been paid in full (e.g., when all payments, Interest, and stipulated penalties are paid in full). Penalties shall accrue regardless of whether U.S. EPA or the Escrow Trustee has notified the Respondent of a violation.
- c. Interest on penalties shall begin to accrue on the unpaid balance at the end of thirty (30) days from the date that payment was due under Paragraph 53.
- d. Stipulated penalties due to U.S. EPA shall be paid contemporaneously with the payment of the amount required by Paragraph 53 and the Interest thereon required by Paragraph 37. However, stipulated penalties, including any Interest owed on the stipulated penalties pursuant to subparagraph c of this Paragraph, shall be paid by a separate certified or cashier's check made payable to "U.S. EPA Hazardous

Substances Superfund," and shall be mailed to:

U.S. EPA - Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment and U.S. EPA Regional Site Spill ID Number 09-3H.

- e. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
- f. Notwithstanding any other provision of this Section, the United States may, in its sole and unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Order.

39. The releases and covenants set forth in Sections XII, XIII and XIV and the contribution protection set forth in Section XV are conditional upon compliance with all the terms of this Consent Order, including – for Respondents electing Settlement Option B – payment pursuant to Paragraph 53.

40. If U.S. EPA or U.S. DOJ brings an action to enforce this Order against Respondent(s), such Respondent(s) shall reimburse the U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

41. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of a Respondent's failure to comply with the requirements of this Order, including, but not limited to, bringing an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

X. FAILURE BY SETTLING FEDERAL AGENCIES TO MAKE TIMELY PAYMENTS

42. Interest on Late Payments

- a. If the United States, on behalf of the Settling Federal Agencies, fails to remit the

payment(s) required by Paragraph 32 within ninety (90) days of the effective date of this Order, then the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance, commencing on the ninety-first (91st) day from the effective date of this Order and accruing through the date of the payment(s).

- b. Interest shall be paid by a separate check in the amount of the Interest owed and shall be sent simultaneously with the payment required by Paragraph 32. Payment of Interest shall be made and a copy of the check shall be sent as provided in Paragraph 34(b).

43. If the full payment required of the Settling Federal Agencies is not made as soon as reasonably practicable, as required by Paragraph 32, the Hazardous Waste Branch Chief of U.S. EPA Office of Regional Counsel, Region IX, may raise the issue of non-payment to the appropriate U.S. DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Order, U.S. EPA and U.S. DOJ have agreed that they will resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

XI. CERTIFICATION OF SETTling PARTY

44. By signing this Consent Order, each Settling Party certifies, individually, that it has no reason to disagree with U.S. EPA's determinations that such Settling Party: (a) contributed less than 2,843,000 pounds of waste sent to the Site; and (b) contributed waste of minimal toxic or other hazardous effects in comparison to other hazardous substances at the Site. A list of contaminants identified to date at the Site is attached as Appendix D.

XII. COVENANT NOT TO SUE AND RESERVATIONS OF RIGHTS BY UNITED STATES FOR SETTLEMENT OPTION A

45. In consideration of the payments that have been made by Respondents that have elected to settle under the provisions of Settlement Option A ("Option A Respondents") under

the terms of this Consent Order, and except as specifically provided in Paragraphs 47 and 48 (reservations of rights by United States) of this Consent Order, the United States hereby covenants not to sue or to take administrative action against any of the Option A Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including for recovery of Natural Resource Damages and for response costs incurred or to be incurred by the Federal Trustees. With respect to present and future liability, this covenant shall take effect upon the effective date of this Order as set forth in Section XX (Effective Date). With respect to each Option A Respondent, individually, this covenant is conditioned upon: a) the satisfactory performance by Respondent of all obligations under this Consent Order; and b) the veracity of any information provided to U.S. EPA by Respondent relating to Respondent's involvement with the Site. This covenant extends only to Option A Respondents and does not extend to any other person.

46. In consideration of the payments that will be made on behalf of Settling Federal Agencies that have elected to settle under the provisions of Settlement Option A ("Option A Settling Federal Agencies") under the terms of this Consent Order, and except as specifically provided in Paragraphs 47 and 48 (reservations of rights by United States) of this Consent Order, U.S. EPA and the United States, on behalf of the Federal Trustees, hereby covenant not to take administrative action against any of the Option A Settling Federal Agencies pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including for recovery of Natural Resource Damages and for response costs incurred or to be incurred by the Federal Trustees. This covenant not to take administrative action shall take effect with respect to each Option A Settling Federal Agency identified in Appendix B upon the receipt of the payment required of the United States, on behalf of that Settling Federal Agency, pursuant to Paragraph 32 of this Consent Order. With respect to each Option A Settling Federal Agency, individually, this covenant is conditioned upon: a) the

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Consent Order; and b) the veracity of any information provided to U.S. EPA by such Settling Federal Agency relating to its involvement with the Site. This covenant extends only to Option A Settling Federal Agencies, and their successors, and does not extend to any other person.

47. General Reservations. The covenants by the United States set forth in Paragraphs 45 and 46 of this Consent Order do not pertain to any matters other than those expressly specified in Paragraphs 45 and 46. The United States reserves, and this Order is without prejudice to, all rights against Option A Respondents, and U.S. EPA and the United States, on behalf of the Federal Trustees, reserve, and this Order is without prejudice to, all rights against the Option A Settling Federal Agencies, with respect to all other matters, including but not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. as to a particular Settling Party, liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site by that Settling Party after the effective date of this Consent Order; and
- d. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant at the Site originating from a facility owned or operated by a Settling Party and not specified in Appendix A (for Respondents) or B (for Settling Federal Agencies).

48. Reservation Concerning De Minimis Status. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Option A Respondent, and U.S. EPA and the United States, on behalf of the Federal Trustees, reserve the right to institute administrative proceedings against any individual Option A Settling Federal Agency, respectively, seeking to compel that Settling Party to perform response actions relating to the Site, and/or to reimburse the United States, for additional costs of response and/or Natural Resource Damages, if information not currently known to U.S. EPA is discovered that indicates

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such Settling Party no longer qualifies as a de minimis party at the Site because such Settling Party contributed more than 2,843,000 pounds of materials containing hazardous substances to the Site, or contributed hazardous substances that are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

XIII. COVENANT NOT TO SUE AND RESERVATIONS OF RIGHTS
BY UNITED STATES FOR SETTLEMENT OPTION B

49. In consideration of the payments that have been and may be made by Respondents that have elected to settle under the provisions of Settlement Option B ("Option B Respondents") under the terms of this Consent Order, and except as specifically provided in Paragraphs 51 through 53 (reservations of rights by United States) of this Consent Order, the United States hereby covenants not to sue or to take administrative action against any of the Option B Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant shall take effect upon the effective date of this Order as set forth in Section XX (Effective Date). With respect to each Option B Respondent, individually, this covenant is conditioned upon: a) the satisfactory performance by Respondent of all obligations under this Consent Order, including, but not limited to, the obligation to make future payments pursuant to Paragraph 53; and b) the veracity of any information provided to U.S. EPA by Respondent relating to Respondent's involvement with the Site. This covenant extends only to Option B Respondents and does not extend to any other person.

50. In consideration of the payments that will be made on behalf of Settling Federal Agencies that have elected to settle under the provisions of Settlement Option B ("Option B Settling Federal Agencies") under the terms of this Consent Order, and except as specifically provided in Paragraphs 51 through 53 (reservations of rights by United States) of this Consent Order, U.S. EPA hereby covenants not to take administrative action against any of the Option B Settling Federal Agencies pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606

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or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. This covenant not to take administrative action shall take effect with respect to each Option B Settling Federal Agency identified in Appendix B upon the receipt of the entire payment required of the United States, on behalf of that Settling Federal Agency, pursuant to Paragraph 32 of this Consent Order. With respect to each Option B Settling Federal Agency, individually, this covenant is conditioned upon: a) the satisfactory performance by such Settling Federal Agency of all of its obligations under this Consent Order, including, but not limited to, the obligation to make future payments pursuant to Paragraph 53; and b) the veracity of any information provided to U.S. EPA by such Settling Federal Agency relating to its involvement with the Site. This covenant extends only to Option B Settling Federal Agencies, and their successors, and does not extend to any other person.

51. General Reservations. The covenants by the United States set forth in Paragraphs 49 and 50 of this Consent Order do not pertain to any matters other than those expressly specified in Paragraphs 49 and 50. The United States reserves, and this Order is without prejudice to, all rights against Option B Respondents, and U.S. EPA and the United States, on behalf of the Federal Trustees, reserve, and this Order is without prejudice to, all rights against the Option B Settling Federal Agencies, with respect to all other matters, including but not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of Natural Resources, and for the costs of any Natural Resource Damage assessments;
- d. liability for response costs incurred or to be incurred by the Federal Trustees;
- e. as to a particular Settling Party, liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site by that Settling Party after the effective date of this Consent Order; and
- f. liability arising from the past, present, or future disposal, release, or threat of

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release of a hazardous substance, pollutant, or contaminant at the Site originating from a facility owned or operated by a Settling Party and not specified in Appendix A (for Respondents) or B (for Settling Federal Agencies).

52. Reservation Concerning De Minimis Status. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Option B Respondent, and the United States, on behalf of the Federal Trustees, and U.S. EPA reserve the right to institute administrative proceedings against any individual Option B Settling Federal Agency, respectively, seeking to compel that Settling Party to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response and/or Natural Resource Damages, if information not currently known to U.S. EPA is discovered that indicates that such Settling Party no longer qualifies as a de minimis party at the Site because such Settling Party contributed more than 2,843,000 pounds of materials containing hazardous substances to the Site, or contributed hazardous substances that are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

53. Reservation for Increased Costs of Response Actions

- a. An estimate of the total cost of response actions at the Site has been developed for this and future de minimis settlements, enforcement activities, and other purposes ("1999 Cost Estimate"). The 1999 Cost Estimate (which does not include response costs to be incurred by the Federal Trustees) is \$271.9 million.
- b. Option B Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B Settling Parties pay, their volumetric share of any increase in response costs if:

CDM204517 (i) after the final Record of Decision ("ROD") for the Site has been issued and prior to certification of completion of the Phase 2 Work, U.S. EPA has revised or approved the revision of, or the Court has approved a revision

of, the cost estimate for all response actions taken or to be taken at the Site (“Post-ROD Cost Estimate”); and

(ii) the estimated total Site Response Costs have increased from the 1999 Cost Estimate of \$271.9 million; and

(iii) based on actual expenditures at the Site and expenditures reasonably anticipated in accordance with the ROD, any other response action decision documents, and the revised cost estimate, U.S. EPA, in its unreviewable discretion, determines that the funds in the Escrow Account that are available for Phase 2 Work pursuant to the Casmalia Consent Decree will not be sufficient to pay for costs associated with performance of the Phase 2 Work or not be sufficient to allow timely continuation of such work.

- c. In addition, Option B Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B Settling Parties pay, their volumetric share of any increase in response costs if:
- (i) upon certification of completion of Phase 2 Work, EPA has revised, or approved the revision of, the cost estimate for all response actions taken or to be taken at the Site (“Post-Phase 2 Cost Estimate”); and
- (ii) the Post-Phase 2 Cost Estimate has increased from either the 1999 Cost Estimate or the Post-ROD Cost Estimate, whichever is greater.
- d. If U.S. EPA determines, in its unreviewable discretion, that it will require payment of amounts derived pursuant to subparagraphs b or c, above, it shall compile an administrative record to support the revised cost estimate. The record shall include, but not be limited to, the Engineering Evaluation/Cost Analysis, the Remedial Investigation/Feasibility Study, the ROD, any other response action decision documents, standard cost documentation for response costs incurred by

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the United States and a summary of response costs incurred by the CSC. The administrative record shall be made available to the public at U.S. EPA Region 9, Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105-3901.

- e. After compilation of the administrative record, U.S. EPA will send a notice to all Option B Settling Parties, which shall i) include the Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, and a brief summary describing and supporting the cost estimate, ii) state the availability of the administrative record for review, and iii) notify each Option B Settling Party of the amount it will be required to pay (i.e., its volumetric share of the increased cost).
- f. U.S. EPA shall have three years from the date of certification of completion of the Phase 2 Work to send the notice described in subparagraph e, above, relating to an increase in the Post-Phase 2 Cost Estimate described in subparagraph c, above.
- g. Option B Settling Parties shall have thirty (30) days from the date of the notice described in subparagraph e, above, to submit comments to U.S. EPA concerning the Post-ROD Cost Estimate or the Post-Phase 2 Cost Estimate, as applicable, and/or the administrative record in support of the cost estimate. Comments shall be submitted to: Casmalia Case Team (SFD-7), 75 Hawthorne Street, San Francisco, California 94105-3901. If U.S. EPA receives comments, it shall prepare a response and shall place the comments and its response in the Superfund Records Center at the address listed in subparagraph d, above. U.S. EPA shall send to the Option B Settling Parties a notice containing the response to comments, any resulting revision to the cost estimate and corresponding adjustment to each Option B Settling Party's required payment amount. If no comments were received, U.S. EPA shall notify the Option B Settling Parties that the prior Post-ROD Cost Estimate or Post-Phase II Cost Estimate, as applicable,

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of which the Settling Parties received notice pursuant to subparagraph e, above, has become final, and shall make a demand for payment to each Option B Settling Party of the amount set forth in such notice.

- h. After U.S. EPA has responded to any comments, U.S. EPA's Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, revised if necessary pursuant to subparagraph g, above, shall be considered final, unless within fourteen (14) days of receipt of the response to comments, the Option B Settling Parties appoint a delegation (consisting of no more than ten (10) persons) to request a meeting with the U.S. EPA Region 9 Superfund Division Director. The appointed delegation may not raise to the Division Director any issues that had not previously been raised by the written comments. (If U.S. EPA received no comments on the initial Post-ROD or Post-Phase 2 Cost Estimate, there shall be no appeal to the Division Director.) Further, the Option B Settling Parties shall not challenge any fixed Site response costs included in the 1999 Cost Estimate, and described in Paragraph 30, above.
- i. If no meeting with the Division Director was requested pursuant to subparagraph h, above, U.S. EPA shall notify the Option B Settling Parties that the prior Post-ROD or Post-Phase 2 Cost Estimate, revised (if necessary) pursuant to subparagraph g, above, has become final, and shall make a demand to each Option B Settling Party for payment of the amount set forth in the notice sent to each Option B Settling Party pursuant to subparagraph g, above.
- j. If a meeting with the Division Director is held, the Division Director shall review the administrative record supporting the cost estimate (including the comments and responses thereto). The Division Director shall resolve the dispute(s) consistent with the NCP and the terms of this Order and will issue a final written administrative decision. Such decision shall be final and shall not be subject to

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judicial review. U.S. EPA shall send the Option B Settling Parties the Division Director's written decision, any necessary revision to the Post-ROD or Post-Phase 2 Cost Estimate, as applicable, any corresponding adjustment to each Option B Settling Party's required payment amount, and a demand for payment of such amount.

k. Option B Respondents' Manner of Payment and Failure to Make Timely Payment

(i) Option B Respondents shall make any additional payment(s) within thirty (30) days of receipt of U.S. EPA's demand for such payment under subparagraphs g, i or j, above. Payment, and notice of such payment, shall be made in the manner set forth in Paragraph 37).

(ii) If an Option B Respondent fails to remit any payment(s) required by subparagraph k(i), above, when due, then that Option B Respondent shall pay Interest on the unpaid balance in accordance with Paragraph 37.

(iii) In addition to Interest, such Option B Respondent shall pay stipulated penalties to U.S. EPA of \$1000 per day for each day that the payment is late. Penalties and Interest on such penalties shall accrue as set forth in Paragraph 38. Stipulated penalties and any Interest thereon shall be paid as set forth in Paragraph 38.

(iv) Each Option B Respondent hereby agrees that the running of the limitations periods in all statutes of limitations applicable to any rights, claims, causes of action, counterclaims, cross claims, and defenses regarding, based upon, or arising out of disposal of hazardous substances at the Site that either U.S. EPA or the CSC could assert against such Option B Respondent shall be suspended for a period commencing on the Effective Date of this Administrative Order on Consent and terminating eighteen (18) months after the latest date upon which

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final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above.

(v) If U.S. EPA or U.S. DOJ brings an action to enforce this Order against the Option B Respondent(s), such Option B Respondent(s) shall reimburse U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

(vi) Payments made under this subparagraph shall be in addition to any other remedies or sanctions available to the United States by virtue of Option B Respondents' failure to comply with the requirements of this Order.

1. Option B Settling Federal Agencies' Manner of Payment and Failure to Make Timely Payment

(i) The United States, on behalf of Option B Settling Federal Agencies, shall make any required additional payment(s) as soon as reasonably practicable after receipt of U.S. EPA's demand for such payment. Payment, and notice of such payment, shall be made in the manner set forth in Paragraph 34(b).

(ii) If the United States, on behalf of Option B Settling Federal Agencies, fails to remit the payment required by subparagraph 1(i), above, within thirty (30) days after receipt of U.S. EPA's demand for such payment, then the United States, on behalf of Option B Settling Federal Agencies, shall pay Interest on the unpaid balance as set forth in Paragraph 42. Interest shall be paid in the manner set forth in Paragraphs 34(b) and 42.

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(iii) If the full payment required of the Option B Settling Federal Agencies is not made as soon as reasonably practicable, as required by subparagraph 1(i), above, the Hazardous Waste Branch Chief of U.S. EPA Office of Regional Counsel, Region IX, may raise the issue of non-payment to the

appropriate U.S. DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Order, U.S. EPA and U.S. DOJ have agreed that they will resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

(iv) Each Option B Settling Federal Agency hereby agrees that the running of the limitations periods in all statutes of limitations applicable to any rights, claims, causes of action, counterclaims, cross claims, and defenses regarding, based upon, or arising out of disposal of hazardous substances at the Site that either U.S. EPA or the CSC could assert against such Option B Settling Federal Agency shall be suspended for a period commencing on the Effective Date of this Administrative Order on Consent and terminating eighteen (18) months after the latest date upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above.

- m. Duty to Inform U.S. EPA of Changes in Address or Legal Status. Until eighteen (18) months after the latest date upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above, each Option B Settling Party shall notify the Casmalia Case Team of any change in address, ownership, political configuration, or corporate or other legal status. Such notice shall be sent to the Casmalia Case Team address provided in Paragraph 34, above.

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XIV. COVENANT NOT TO SUE BY RESPONDENTS

54. Except as provided in Paragraph 56(c), Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or

employees with respect to the Site or this Consent Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from U.S. EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of response activities at the Site; and
- c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

55. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

56. Settling Parties covenant not to sue and agree not to assert any claims or causes of action with regard to the Site pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, against:

- a. any other Settling Party;
- b. any PRPs (Federal or non-Federal) that U.S. EPA may in the future designate as "de micromis" consistent with U.S. EPA's Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors (June 3, 1996) and/or other applicable guidance;
- c. any other PRP (Federal or non-Federal) for a period of thirty (33) months after the effective date of this Order, at which time Respondents may assert claims or causes of action against any non-de micromis PRPs that have not settled their liability for the Site; or
- d. any of the defendants in United States v. ABB Vetco Gray Inc., Civ. No. 96-6518-KMW (JGx), that are parties to the Casmalia Consent Decree entered in that action on June 27, 1997.

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XV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

57. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Except as otherwise provided in Paragraph 56, the United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

58. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, Natural Resource Damages, recovery of response costs or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants included in Paragraphs 45 (Covenant Not to Sue Option A Settling Respondents), 46 (Covenant Not to Sue Option A Settling Federal Agencies), 49 (Covenant Not to Sue Option B Respondents) or 50 (Covenant Not to Sue Option B Settling Federal Agencies), as applicable.

59. The Parties agree that each Settling Party is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order.

- a. For Option A Settling Parties, the "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site and Natural Resource Damages at or relating to the Site; provided, however, that for Option A Settling Parties, the

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“matters addressed” in this Consent Order do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Order (except for claims for failure to comply with this Order), in the event that the United States asserts rights against Settling Parties coming within the scope of such reservations.

- b. For Option B Settling Parties, the "matters addressed" in this Consent Order are all response actions taken by the United States, except the Federal Trustees, and by private parties, and all response costs incurred and to be incurred by the United States, except the Federal Trustees, and by private parties, at or in connection with the Site; provided, however, that for Option B Settling Parties, the “matters addressed” in this Consent Order do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Order (except for claims for failure to comply with this Order), in the event that the United States asserts rights against Settling Parties coming within the scope of such reservations. In addition, for Option B Settling Parties, the “matters addressed” in this Consent Order do not include Natural Resource Damages.

60. The Settling Parties agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Order, that is not otherwise prohibited by Paragraph 56, they will notify U.S. EPA in writing at the following address no later than sixty (60) days prior to the initiation of such suit or claim:

Chief, Hazardous Waste Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street (ORC-3)
San Francisco, CA 94105-3901

The Settling Parties further agree that they will notify U.S. EPA no later than thirty (30) days prior to filing a motion for summary judgment and not later than sixty (60) days prior to trial concerning any such suit or claim.

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XVI. PARTIES BOUND

61. This Consent Order shall apply to and be binding upon U.S. EPA, the United States, on behalf of the Federal Trustees, and upon Respondents and their heirs, successors and assigns. Any change in ownership, political configuration, or corporate or other legal status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to bind legally the Party represented by him or her.

62. This Consent Order shall apply to and be binding upon U.S. EPA, the Federal Trustees, and upon Settling Federal Agencies. Each signatory to this Consent Order represents that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the federal department, agency or instrumentality represented by him or her.

XVII. INTEGRATION/APPENDICES

63. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is the list of Respondents.

"Appendix B" is the list of Settling Federal Agencies.

"Appendix C" is a map of the Site.

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"Appendix D" is a list of contaminants identified to date at the Site.

XVIII. PUBLIC COMMENT

64. This Consent Order shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and Section 7003 of RCRA, 42 U.S.C. § 6973. Commenters may request an opportunity for a public hearing in the

affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), U.S. EPA or the United States, on behalf of the Federal Trustees, may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

XIX. ATTORNEY GENERAL APPROVAL


The Attorney General or her designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XX. EFFECTIVE DATE

65. The effective date of this Consent Order shall be the date upon which U.S. EPA issues written notice to Settling Parties and the Section Chief of the Environmental Defense Section of the Department of Justice that the public comment period pursuant to Paragraph 64 of this Order has closed and that comments received, if any, do not require modification of or withdrawal from this Consent Order by U.S. EPA or the United States, on behalf of the Federal Trustees.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: 
Keith Takata
Director
Superfund Division
U.S. EPA Region IX

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For the United States, on behalf of the Federal Trustees

By:



W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

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